IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS No 5351 to 5366 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

BHIKHABHAI RAMABHAI

Versus

DY. EXECUTIVE ENGINEER

Appearance:

1. Special Civil Applications No. 5351 to 5366 of 1991

MRS SANGEETA PAHWA for MR PM THAKKAR for Petitioners

MR HL JANI AGP for Respondent

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 24/03/2004

ORAL JUDGEMENT

1. In this group of identical petitions under Article 227 of the Constitution, a set of identical awards (except the more detailed award challenged in SCA No.5365 of 1991) dated 25.2.1991 made by the Labour Court, Surat have been challenged with a prayer to quash the same and order reinstatement of the petitioners with continuity of service and full backwages. In para 4 of

the petitions, the petitioners have professed to refer to and rely upon the statements and averments made in another special civil application of which the number is kept blank. However, from the other averments, the petitioners appear to be in a group of 17 similarly situated labourers working on daily wage basis under the same employer, who is the respondent herein.

2. The impugned awards made by the Labour Court under the provisions of the Industrial Disputes Act record findings of fact to the effect that the petitioners appeared to have been intermittently employed and they appeared to have left the service on their own. Under such circumstances, the petitioners were held to be not entitled to reinstatement or backwages and their reference cases were accordingly rejected.

3. In view of the fact that the discussion of evidence in respect of the questions of fact appeared to be sketchy and it having been found to be difficult to understand the awards in absence of discussion of the oral evidence, it was, by order dated 2.4.2003, directed that the original record and proceedings of the reference cases be called for from the Labour Court. The original record having been thus received and perused in this Court, it was found that the case of the group of workmen was sought to be based upon the pleadings and affidavits of the workmen and the cross-examination of some of workmen on the one side and the written statements and deposition of only one witness on the other side. In other words, the evidence recorded in one of the cases appears to have been adopted in and read for all the cases of the same group of workmen. Perusing such evidence, it was found that the dispute about continuous service for several years was seriously raised and evidence in that regard was wanting. There was no evidence worth the name proving the claim of the workmen that they had continuously worked for a year or for 240 days in any given year or in the year preceding the date of termination of their service. In such circumstances, the learned counsel for the petitioners vehemently argued that the claim of the workmen that they had been in service since a particular year ought to be accepted as evidence of continuous service and, even assuming that actual attendance was intermittent, the period of service ought to be treated as continuous since non-attendance would be on account of cessation of work at the instance of the employer. The learned counsel relied upon two recent judgments of this Court in MOTI CERAMIC INDUSTRIES v. JIVUBEN RUPABHAI [2000 (2) G.L.R. 1558] and SUNIL BALCHANDRA JANI v. GUJARAT ELECTRICITY BOARD [2002 (2)

G.L.R. 1379] to submit that, in case of continuous service for a period, any interruption on account of cessation of work not due to any fault on the part of the workman could be disregarded under the provisions of sub-section (1) of Section 25-B and, in such a case, the requirement of working for 240 days as mentioned in sub-section (2) of Section 25-B would not apply. The learned counsel also submitted that in view of the sketchy state of evidence recorded in the trial Court due to their ignorance or otherwise, the matters should be remanded for recording evidence afresh in the interest of justice.

4. In the facts of these cases, termination of service being of the year 1982, references being of the year 1985 and the petitions being of the year 1991, the record and proceedings were verified and perused, even in absence of any specific ground for interference being made out in the petitions, to see that justice was not denied to the petitioners. However, it is found from perusal of the record that the findings of fact recorded by the Labour Court are not perverse and the petitioners have not cared to bring on record any cogent or documentary evidence to establish that they had continuously worked under the employer despite that issue of fact having been specifically raised. In view of the case of the employer that the petitioners had intermittently worked on the activity, which also was essentially of intermittent and temporary nature, and that the petitioners had abandoned their service on their own, coupled with the state of absolutely vague evidence, the aforesaid judgments have no application in the facts of these cases.

5. In the above facts and for the reasons discussed hereinabove, neither any jurisdictional error nor any error apparent on the face of record could be found in the impugned awards and, therefore, no interference in exercise of the powers of this Court under Article 227 of the Constitution is called for. The petitions are, therefore, rejected. Rule in each of the petitions is discharged with no order as to costs. Sd/-

(D.H.Waghela,J)

(KMG Thilake)